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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

XIU FANG LUO,)	No. C 08-0340 PJH
)	
Plaintiff,)	
)	
v.)	ANSWER
)	
MICHAEL CHERTOFF, Secretary,)	
Department of Homeland Security; EMILIO)	
GONZALEZ, Director, United States)	
Citizenship and Immigration Services;)	
JOSEPH P. RUSSONIELLO,* United)	
States Attorney, California Northern)	
District; ROSEMARY MELVILLE, San)	
Francisco District Director; ROBERT S.)	
MUELLER, III, Director of the Federal)	
Bureau of Investigation,)	
)	
Defendants.)	
)	

Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of Mandamus.

1. Paragraph One of the Complaint consists of Plaintiff's characterizations of this action, to which no response is required. To the extent a response is required, Defendants deny the allegations therein.

*Pursuant to Fed. R. Civ. P. 25(d)(1), Joseph P. Russoniello is substituted for his predecessor, Scott Schools, as the United States Attorney for the Northern District of California.

ANSWER
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2. Defendants admit the first and second sentences of Paragraph Two. Defendants admit the first half of the third sentence, but deny the remaining allegations in Paragraph Two.

3. Defendants admit the allegations in Paragraph Three.

4. Defendants admit the allegations in Paragraph Four.

5. Defendants deny that the United States Attorney has any authority over the application at issue in this case. Defendants admit that the remainder of the allegations in Paragraph Five.

6. Defendants deny the allegations in Paragraph Six.

6.¹ The second Paragraph "Six" consists of Plaintiff's allegations regarding jurisdiction, to which no response is required. To the extent a response is required, Defendants deny the allegations therein.

7. Paragraph Seven consists of Plaintiff's allegations regarding venue, to which no response is required.

8. Defendants deny that Plaintiff has exhausted his administrative remedies. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph Eight, and on that basis, deny them.

9. Paragraph Nine consists of Plaintiff's characterizations of this action, to which no response is necessary. To the extent a response is required, Defendants deny the allegations therein.

10. Defendants admit the allegations in Paragraph Ten.

11. Defendants lack sufficient information to admit or deny the allegations in Paragraph Eleven, and on that basis, deny them.

12. Defendants lack sufficient information to admit or deny the allegations in Paragraph Twelve, and on that basis, deny them.

13. Defendants deny the allegations in Paragraph Thirteen.

14. Defendants admit the first sentence and deny the second sentence in Paragraph Fourteen.

¹The Complaint contains two paragraphs numbered "6."

15. Defendants deny the allegations in Paragraph Fifteen.

16. Defendants lack sufficient information to admit or deny the allegations in Paragraph Sixteen, and on that basis, deny them.

17. Defendants deny the allegations in Paragraph Seventeen.

18. Paragraph Eighteen consists of Plaintiff's characterizations of this action, to which no response is necessary. To the extent a response is required, Defendants deny the allegations therein.

19. Paragraph Nineteen consists of Plaintiff's prayer for relief, to which no response is required. To the extent a response is required, Defendants deny that Plaintiff is entitled to any of the requested relief.

AFFIRMATIVE AND/OR OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified, are hereby denied. For further and separate answer, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

The court lacks jurisdiction over the subject matter of this action.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against the Respondents upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any injury or damages to the Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

FIFTH AFFIRMATIVE DEFENSE

Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

///

1 WHEREFORE, Defendants pray for relief as follows:

2 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's
3 Complaint with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief
4 as it deems just and proper under the circumstances.

5 Dated: March 24, 2008

Respectfully submitted,

6 JOSEPH P. RUSSONIELLO
7 United States Attorney

8 /s/
9 MELANIE L. PROCTOR
10 Assistant United States Attorney
11 Attorneys for Defendants
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CERTIFICATE OF SERVICE

Xiu Fang Luo v. Michael Chertoff, et al.
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The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

ANSWER

to be served this date upon the party(ies) as follows:

✓ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

_____ **PERSONAL SERVICE (BY MESSENGER)** I caused such envelope to be delivered by hand to the person or offices of each addressee below.

_____ **FACSIMILE (FAX)** Telephone No.: _____ I caused each such document to be sent by facsimile to the person or offices of each addressee below.

_____ **FEDERAL EXPRESS**

_____ **CERTIFIED MAIL**

_____ **BY E-MAIL** I caused each such document to be sent by e-mail to the person or offices of each addressee below.

to the party(ies) addressed as follows:

Xiu Fang Luo, Pro Se
63 Mercury Street
San Francisco, California 94124

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 24, 2008 at San Francisco, California.

/s/
CAROL E WEXELBAUM
Legal Assistant